

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

EDWARD L. DOWNING

PLAINTIFF,

INDEX NO.

AGAINST

TOWN OF CICERO NY,
TOWN OF CICERO NY POLICE
OFFICER KYLE HARRINGTON
(CICERO POLICE DEPT)

COMPLAINT

DEFENDANT,

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The complaint of the plaintiff Edward L. Downing, respectfully shows and alleges as follows:

THE PARTIES

- 1: The plaintiff herein Edward L. Downing, is a individual and is a resident of the State of New York. Mr Downing resides at 553 Shacksbush Rd, Bernhards Bay, New York County of Oswego.
- 2: The defendant herein, The Town of Cicero is a municipality located at 8236 Brewerton Rd, Cicero, New York County of Onondaga
- 3: The defendant herein , The Town of Cicero Police Dept. is located at 6200 NY-31, Cicero, New York County of Onondaga , and is a department of the defendant Town of Cicero
- 4: The defendant herein, Kyle Harrington is a Police officer, employed by the defendant ,The Town of Cicero, acting within the course and scope of his employment by the Town of Cicero Police Dept at 6200 NY-31, Cicero, New York County of Onondaga. May also be referred to in this complaint as Officer Harrington.

5: The basis for venue is Defendants place of Residence , The location of the municipality , and the place that injury to the Plaintiff occurred.

Pursuant to CPLR 509 , Plaintiff designates County of Onondaga, as the place for trial.

THE FACTS

6: Pursuant to General Municipal Law Section 50-e, on or about January 8 ,2024. Plaintiff timely presented to defendants a verified notice of claim for damages sustained by the Plaintiff as a result of the actions described in this verified complaint. A copy of the notice of claim along with Affidavit of service / Return receipt from the United States Postal Service with Signatures has been included. (Exhibit A)

7: On 1/2/2023 upon information and belief officer Harrington responded to a complaint on Bethlehem Dr, in the town of Cicero, about a harassment incident involving Ann Downing. After investigation with the complainants David Isabell and Renee Jacobs, Officer Harrington made the decision there was probable cause to arrest Ann Downing on several charges, she later was granted an ACD on all charges. At that time officer Harrington also decided to pursue harassment charges against Edward Downing.

8: Commencement of criminal action against Edward Downing began on 1/20/2023, with the filing of the information with the court. Not until March 15, 2023 the Judge signed the criminal summons against the Plaintiff. Arraignment was not until 4/18/2023. well beyond the 30 days required by speedy trial statutes. Justice Bruffet still continued to prosecute the case up until November 2023, when he recused himself from the case. The case was transferred to Justice DeMarche in December 2023 at that time the DA responded and appeared for the first time ever and case was dismissed.

9: Charges against the Plaintiff were dismissed in a favorable decision on 12/14/2023 at the Town of Cicero Court. (Harassment 2nd)

First Cause of Action --- Malicious Prosecution

10: On 1/2/2023 at around 6:35pm officer Harrington while engaged and working in his regular course of duty as a police officer for The Town of Cicero, did commit the Tort of malicious prosecution when at no point in time did he have any evidence or probable cause to prosecute the Plaintiff, and went

above and beyond to create false information on a complaint that would be likely to influence a Judge or Jury decision and forwarded the information to superiors and Prosecutors.

11: On 1/2/2023 at aprox 6:42pm officer Harrington while engaged and working in his regular course of duty as a police officer for The Town of Cicero did commit the TORT of malicious prosecution when he attempted to get the complainants to assist him in fabricating additional charges of criminal mischief . And it is clear that if the complainants would have agreed to the act, additional charges would have been filed against the Plaintiff.

12: The Town of Cicero did commit the TORT malicious prosecution when they continued to prosecute a case without any acknowledgement of charges or Discovery from the prosecutors office after 8+ months, knowing that the Plaintiffs rights to a speedy trial have been violated.

Second Cause of Action ----- Negligence

13: On 1/2/2023 the Town of Cicero and Town of Cicero Police did commit the TORT of negligence , when they failed to adequately hire/train/retain their officers, including Officer Harrington who did not have the training and/or experience to properly provide adequate assistance to prosecute the case on his own, Town of Cicero's policy's have attributed to more than one constitutional right violations. And It is evident that town of Cicero's policies has adopted a lesser standard of fault when prosecuting. Records show that Cicero Police , prefer to Punish their officers including Officer Harrington by allowing them to use paid vacation days, instead of an actual suspension.

14: On 1/10/2023 the Cicero Police Department . did commit the TORT of negligence when the supervisor of officer Harrington.... SGT Thomas J Leo signed the Narrative without properly examining the evidence being forwarded to prosecutors against the Plaintiff, knowing that just a couple days prior, officer Harrington just returned from a 10 day "PAID" suspension for violating several police policy's, and filing a false or incomplete report.

15: The Town of Cicero did commit the TORT of negligence when they continued to prosecute a case without any acknowledgement of charges or Discovery from the prosecutors office after 8+ months, knowing that the Plaintiffs rights to a speedy trial have been clearly been violated.

Third Cause of Action ----- False Arrest

16: On 3/26/2023 at 7:22 Officer Harrington did commit the TORT of False arrest, when without

probable cause, and knowing he fabricated the evidence against the Plaintiff, and did Arrest and serve the Plaintiff with a Criminal Summons.

17: On 4/18/23 The Town of Cicero did commit the Tort of False Arrest when they Arranged the Plaintiff, and issued a restraining order.

Fourth Cause of Action ----- 42 U.S.C. 1983 Montell Liability against
The Town of Cicero and The Town of Cicero Police Department

18: As set forth above, the policy or custom of The Town of Cicero and the Cicero Police Department enabled its agents and employees to act with deliberate indifference to Plaintiff's constitutional rights.

19: As a direct and proximate result of Defendants' actions, Plaintiff suffered injuries as herein alleged including, past and future; mental anguish / emotional distress in the past and future.

20: Plaintiff is entitled to an award of attorney fees and costs under 42 U.S.C. §

21: 1988(b), and hereby makes a demand for the same.
Plaintiff's damages exceed the jurisdiction of all lower courts.
Plaintiff hereby demands a trial by jury

22: Plaintiff is informed and believes, and on the basis of that information and belief alleges, that at all times mentioned in this complaint, Defendant, Officer Harrington, was the agent and employee of the co-defendants, The Town of Cicero and The Cicero Police Department, and in doing the things alleged in this complaint Officer Harrington was acting within the course and scope of that agency and employment. As such, Defendants, The Town of Cicero and The Cicero Police Department are vicariously liable for the acts of Defendant, Officer Harrington.

23: As a result of the actions of Defendants, as herein alleged, Plaintiff suffered degradation and humiliation.

24: Officer Harrington acted with oppression, fraud, malice, entitling Plaintiff to an award of punitive damages as against the Defendants.

25: The continued and extended prosecution of the Plaintiff, by the Defendants and the issuance of a restraining order has caused severe emotional distress on the Plaintiff.

WHEREFORE, Plaintiff asks for judgment against the Defendants for the following:

26. All actual damages, including, but not limited to, damages for lost earnings and benefits, in an amount to be determined upon the jury trial of this action;

27. Punitive damages in an amount to be determined upon the jury trial of this action;
All attorney's fees and costs of this action;

Prejudgment and post-judgment interest; and

Such other and different relief that the Court deems just and proper.

Dated 4-27-2024

Edward L. Downing
Plaintiff

Verification

Edward L. Downing

being duly sworn, deposes and says:

I am the Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

Edward L. Downing
EDWARD L. DOWNING

On the 29 day of April, 2024, before me
personally appeared Edward L. Downing
known to be the individual described in, and who
executed the foregoing instrument, and acknowledged that
he executed the same.

Notary Public

CLARE HAYNES
No. 01HAB1480X0
Notary Public, State of New York
Qualified in Oswego County
My Commission Expires July 3, 2026

STATE OF NEW YORK
COURT COUNTY OF ONONDAGA

Index No.

Edward L. Downing

Plaintiff

Plaintiff designates Onondaga County.
The basis of the venue is the
residence of Defendants.

SUMMONS

vs.

Town of Cicero
Town of Cicero Police
Officer Kyle Harrington

Defendant.

Plaintiff resides at:

553 Shacksbush rd

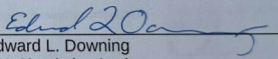
Bernhards Bay, NY 13028

County of Oswego

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a Notice of Appearance, on the Plaintiff's attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: 4-27-2024


Edward L. Downing
553 Shacksbush rd
Bernhards Bay, NY 13028
315-263-8847

Defendant's Address:
Town of Cicero
8236 Brewerton Rd
Cicero, NY 13039